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JAN 14 2005

ZILKP012US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial Number: 10/604,631
Filing Date: August 6, 2003
Applicant(s): Zilka et al.
Title: Device, System and Method for On-Line Explosive Deslagging
Group Art Unit: 3641
Examiner: Harvey E. Behrend

Information Disclosure Statement

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Attached is a completed substitute form PTO-1449A (1 sheet patent documents). Also attached are the four cited references. Following are comments on this reference cited pursuant to Rule 98:

All of these references were brought to applicants' attention during the past three months after they were filed in an opposition to patent grant in applicants' counterpart application in Europe. Although these documents are all not pertinent to the patentability of applicants' invention, applicants are filing these in an information disclosure so as to guarantee full disclosure of all materials known to applicant. These are the references which were referred to by applicants' counsel in point 11 of the December 2, 2004 office action reply in this case. Comments on these specific references are as follows:

Handbuch der Technischen Temperaturmessung, Fritz Lieneweg, Vieweg Verlag 1976, pages 273-276

This document concerns a very remote field of technology. It relates to high sensitivity temperature gauges while applicants' invention relates to blasting using a cooled explosive. A person skilled in the art of blasting will never consider temperature gauging art in order to find a solution to a cleaning problem and particularly to figure out how to cool an explosive in a hot environment so it can be used for online deslagging. This document is therefore not pertinent to patentability.

Declaration by Dr. Ch. Mattenberger and Dr. M. Andrée of Airmes AG, Werkstrasse 10, CH-3428, Wiler b. Utzensdorf:

Even if for the sake of argument this declaration is accepted at face value, it is irrelevant to applicants' invention. The fact that a temperature probe may be cooled does not in any way disclose or suggest cooling an explosive so that the explosive can be moved to a desired location within a heat exchange device and then detonated at will.

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"Use of explosives for boiler deslagging gains acceptance" Article in "Power," McGraw Hill, Special Report Nuclear Power, März 1996, pages 49-51

This reference does not disclose or suggest using a cooled explosive along the lines of applicants' invention, nor would such cooling have been required to perform what is described in this article. It is also not disclosed or suggested that a tubular device with an explosive at its end is freely moved to a desired position and the explosive then detonated.

Declaration by Mr. William R. Harvey, Vice President Sales, Precision Blasting Inc., 2415 Caroline Road, Flatwoods, Kentucky 41139, USA:

The declaration by Mr. William R. Harvey is not pertinent to, and does not affect the patentability of, applicant's invention. It is totally self-serving, unsupported, and inaccurate, for many reasons:

- 1) There is nothing in this declaration which establishes personal knowledge by Mr. Harvey of the July 1993 blasting work at Pawnee, or his presence as a witness at whatever blasting work may have taken place in July 1993.
- 2) There is nothing which indicates how or when Mr. Harvey came into possession of the allegations contained in the declaration about the July 1993 blasting work.
- 3) The persons alleged to have been present at this blasting work, Tim Smith, Brad McGuiness, and Rick Moore, have not themselves provided any declarations or affidavits in relation to this work, although they would plainly have been in a better position than Mr. Harvey to accurately comment as witnesses in relation to this blasting work.
- 4) There are no contemporaneous documents, in the form of notes, diagrams, work details, or otherwise to establish what actually happened at the Pawnee blasting site between July 14 and July 18, 1993. The alleged contemporaneous diary entries supplied with the declaration establish, at best, nothing other than that Mr. Tim Smith apparently did some type of work at Pawnee in July 1993. The time entries are completely void of any contemporaneous notes about "online" deslagging, about "cooling" the explosive, about what work was actually done on the Pawnee facility, or about any type of apparatus or method which may have been used in this work.
- 5) The only allegations about what supposedly occurred at this blasting job were made by Mr. Harvey on page 2/2 of his declaration, and illustrated in Mr. Harvey's accompanying undated drawing. As understood, this statement and drawing were created by Mr. Harvey, *more than ten years after the fact*, in relation to stale, old events to which Mr. Harvey was not himself a witness. Mr. Harvey has not even indicated that he obtained the information from one of the noted workers, from whom, when, and under what circumstances.
- 6) Mr. Harvey is biased. Mr. Harvey's business directly competes with that of applicants, in the area of explosives-based deslagging. Applicants strongly believe that Mr. Harvey's statements

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are likely to be colored by the last ten years of hindsight during which applicants invented and further developed and successfully brought to market a novel and nonobvious online deslagging device and method, and thus are likely to be badly tainted by Mr. Harvey's business interests adverse to those of applicants. This is uncorroborated testimony by an interested person recalling long-past events. Such evidence is normally not considered persuasive or given much weight. The Federal Circuit has shown a specific disfavor for such evidence, noting that it is generally insufficient as a matter of law in testing validity under 35 U.S.C. 102. (See, e.g., Woodland Trust vs. FlowerTree Nursery, Inc., 148 F.3d 1368 (1998).)

7) This declaration was apparently solicited from Mr. Harvey by a separate European company seeking to oppose a counterpart patent application filed by applicants in Europe. "Witnesses whose memories are prodded by the eagerness of interested parties to elicit testimony favorable to themselves are not usually to be depended upon for accurate information." Barbed Wire Patent Case, 143 U.S. 275, 12 S.Ct. 443, 36 L.Ed. 154 (1892).

8) Mr. Harvey's statement that the "application as described was, at that time, public knowledge" is unsupported by any specific information, and bears no weight.

9) Mr. Harvey's statement that "another blasting company had performed the application" says nothing about who this unnamed "other company" was. It provides no support for what the "application" performed by this other company actually was. It relies on unspecified statements by unnamed "plant personnel how this application had been done in the past." Nothing in this statement bears any weight at all. Nor is there any evidence that the work was done without any cloak of confidentiality.

10) Applicants' understanding is that the blasting job discussed in this declaration did not at all happen as described by Mr. Harvey.

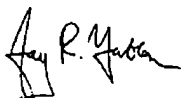
For all of the above reasons, this declaration is not pertinent to patentability and does not affect the patentability of applicant's invention.

Certification

I hereby certify that these references were first cited in a communication from a foreign patent office (the EPO) in a counterpart foreign application which was first received by applicants' European counsel not more than three months prior to the filing of this information disclosure.

These references do not anticipate or render obvious, the disclosures and claims of the present application.

Very truly yours,



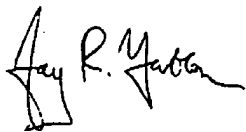
Jay R. Yablon
Registration # 30604

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I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office Fax Number 703-872-9306 on the transmission date of January 14, 2005, pursuant to 37 C.F.R. 1.8.

Name of Person signing this certificate: Jay R. Yablon

A handwritten signature in black ink, appearing to read "Jay R. Yablon". The signature is stylized with a large, looped "J" and a cursive "Yablon".

(signature)

PTO/SB/015 (03-03)

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**INFORMATION DISCLOSURE
STATEMENT BY APPLICANT**

(Use as many sheets as necessary)

Sheet

1

of

1

Complete If Known

Application Number

10/604,631

Filing Date

August 6, 2003

First Named Inventor

Zilka

Art Unit

3641

Examiner Name

Harvey E. Behrend

Attorney Docket Number

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NON PATENT LITERATURE DOCUMENTS

Examiner Initials*	Cite No. ¹	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T ²
		Handbuch der Technischen Temperaturmessung, Fritz Lieneweg, Vieweg Verlag 1976, pages 273-276.	
		Declaration by Dr. Ch. Mattenberger and Dr. M. Andrée of Airmes AG, Werkstrasse 10, CH-3428, Wiler b. Utzensdorf.	
		"Use of explosives for boiler deslagging gains acceptance" Article in "Power," McGraw Hill, Special Report Nuclear Power, März 1996, pages 49-51.	
		Declaration by Mr. William R. Harvey, Vice President Sales, Precision Blasting Inc., 2415 Caroline Road, Flatwoods, Kentucky 41139, USA	

Examiner
SignatureDate
Considered

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 809. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

¹ Applicant's unique citation designation number (optional). ² Applicant is to place a check mark here if English language Translation is attached. This collection of information is required by 37 CFR 1.97 and 1.99. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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